IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

FIRST APPEAL NO.347 OF 1999.

Shri Narayan Trambak Burkule : Appellant.

versus

Shri Satish Bhanudas Kulkarni : Respondent.

Mr.S.S.Kulkarni for the appellant.

CORAM : D.G.DESHPANDE,J.

DATED : 15th March 2005.

ORAL ORDER

1. Heard advocate for the appellant. Respondent is served. Nobody is present for the respondent. The appeal is filed by the original plaintiff against dismissal of his suit. The trial court dismissed the suit, which was based on the promissory note Exhibit 35, on the ground that the plaintiff has failed to prove the different transactions mentioned in the promissory note. A short question was raised by

the counsel for the plaintiff and, that is, if the defendant in his reply notice has admitted his liability to the extent of Rs.62,000/-, then on that admission, a decree should have been granted in favour of the plaintiff. My attention was drawn by the counsel for the plaintiff to the reply notice (Exhibit 39) given by the defendant. It is dated 9.5.1992. The defendant has, therein, admitted his liability of Rs.62,000/-.

2. It is, therefore, clear that this is a case where the defendant has admitted his liability in reply notice (Exhibit 39). The claim of the plaintiff regarding remaining Rs.15,000/- has specifically denied by the defendant and, therefore, no decree can be passed in respect of that claim. The trial Court did not take into consideration the effect of this admission given by the defendant in reply notice and wrongly dismissed the suit of the plaintiff.

3. The counsel for the appellant/plaintiff, at this juncture, fairly conceded that the plaintiff has received an amount of Rs.30,000/- in proceedings under Section 138 of the Negotiable Instruments Act. Hence this appeal is

required to be allowed partly. Therefore, I pass the following :-

:ORDER:

The appeal is partly allowed.

The judgment and decree of the trial Court dismissing the suit of the plaintiff is set aside. The suit of the plaintiff is decreed to the extent of remaining amount of Rs.32,000/- with interest at 9% per annum from the date of the notice and with proportionate costs before the trial Court

Since nobody is present for the respondents, no order as to costs.

[D.G.DESHPANDE]

15/03/2005 JUDGE.